

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 08/21/2015

TIME: 09:58:00 AM

DEPT: 42

JUDICIAL OFFICER PRESIDING: Henry Walsh

CLERK: Hellmi McIntyre

REPORTER/ERM:

CASE NO: **56-2013-00436494-CU-BT-VTA**

CASE TITLE: **Bustillos vs. Oxnard Automobile Exchange Inc**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the demurrer and motions to strike filed by Access Finance as to the cross-complaint(s) of Oxnard Automobile Exchange on August 19, 2015 under submission, now rules as follows:

The motion to strike the original cross-complaint is denied. As a charging document it has been superseded by the second amended cross-complaint. Striking it serves no useful purpose.

At argument, the court had indicated a tentative ruling to overrule the demurrer to the first and second causes of action of the cross-complaint (fraud and negligent misrepresentation). The argument of counsel for AFI is persuasive. The verified first amended cross-complaint alleged that Oxnard Automobile Exchange had knowledge of the contract between itself and AFI, and that it knew that the tracking devices were being installed. Based on this the court had sustained a demurrer to the original cross-complaint on the basis that Oxnard Auto Exchange could not establish its reliance on representations to the contrary by AFI. Oxnard Auto Exchange cannot simply walk away from those verified allegations in order to avoid a further demurrer. The demurrer to the first and second causes of action is sustained without leave to amend.

The demurrer to the 3rd and 4th causes of action is sustained without leave to amend. Both of these assume a fiduciary relationship between the parties. There is a financial relationship between them, and a principal/agent relationship. Neither of these, however, transform those relationships into a fiduciary relationship. There are no other facts from which the existence of a fiduciary relationship can be created.

The 5th and 6th causes of action for equitable indemnity and comparative indemnity are duplicative. At the request of Oxnard Auto Exchange, the demurrer is sustained without leave as to the 6th cause of

action. It is overruled as to the 5th cause of action.

The demurrer is overruled as to the 7th and 8th causes of action for contribution and declaratory relief. There is a purported settlement between AFI and the plaintiff. That is outside the pleadings and these two causes of action remain valid.

The motion to strike portions of the second amended cross-complaint is denied. Cross-defendant AFI is given twenty (20) days from the date of this ruling within which to file its answer.

The clerk is directed to give notice.